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CHAIRMAN ADAM PUTNAM WASHINGTON D.C. 226-2302

H.R. 2262 - Hardrock Mining and Reclamation Act of 2007

FLOOR SITUATION

H.R. 2262 is being considered on the floor pursuant to a structured rule. The rule:

- Provides for one hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on Natural Resources.
- Waives all points of order against consideration of the bill except for clauses 9 (earmarks) and 10 (PAYGO) of Rule XXI.
- Provides that the amendment in the nature of a substitute recommended by the Committee on Natural Resources now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read.
- All points of order against the committee amendment in the nature of a substitute are waived except clause 10 (PAYGO) of rule XXI.
- Makes in order only those amendments printed in the Rules Committee report accompanying the resolution. (See Amendments Section Below)
- The amendments made in order may be offered only in the order printed in the Rules Committee report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole.
- Waives all points of order against the amendments except for clauses 9 (earmarks) and 10 (PAYGO) rule XXI are waived.
- Provides one motion to recommit with or without instructions.
- Provides that, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

The bill was introduced by Representative Nick Rahall (D-WV) on May 10, 2007. The legislation was ordered to be reported from the Committee on Natural Resources, by a recorded vote of 23-15, on October 23, 2007.

*Note: In the Natural Resources Committee markup on H.R. 2262, every Republican Member that was present (15) voted against the bill. In the 103rd Congress, similar legislation, H.R. 322 was passed in the House (roll call vote 576) and then went onto a conference committee but was never voted out.

The bill is expected to be considered on the floor of the House of Representatives on October 31, 2007.

EXECUTIVE SUMMARY

H.R. 2262 was introduced by Representative Nick Rahall (D-WV) and was ordered to be reported from the Committee on Natural Resources, by a recorded vote of 23-15, on October 23, 2007 in which every Republican Member that was present voted against the bill. The Congressional Budget Office (CBO) estimates that implementing the bill would increase discretionary spending by $16 million in 2008 and $267 million over the 2008-2012 period, assuming appropriation of the necessary amounts.

H.R. 2262 sets up two new funds for environmental clean up related to hardrock mining. The first fund will assist in reclaiming lands left behind by abandoned mines. The second fund will assist communities affected by mining on or near their communities in cleaning up environmental damage. The legislation also allows new royalties for mining operations, sets new user fees, and will section off roughly 90 million acres of land from being able to be explored for minerals or mined.

The legislation also puts in place new environmental regulations, discontinues the use of patents in hardrock mining, increases permit fees, gives new powers to the Secretaries of Interior and Agriculture to enforce regulations, and allows private citizens to sue or call into question hardrock mining operations and permits.

Natural Resources Committee Republicans have significant concerns with the following provisions: (1) new royalties imposed (Title I), (2) limitation on land use (Title II), and (3) new land veto power for the Secretaries of Agriculture and the Interior (Title III).

SUMMARY

<u>New royalties placed on hardrock mining</u>

The legislation imposes a new royalty system on hardrock mining. A royalty of 8% will be assed on the gross income of any hardrock mining claims that are approved after the enactment of this Act.

**Note: Natural Resources Committee Republicans stated that, "The gross royalty provision in H.R. 2262 will cause operating mines to close prematurely, leaving valuable mineral resources in the ground, adversely impacting local and state revenues collected from the mining industry, lead to unemployment in the mining sector causing dislocation and economic hardship in mining dependent communities, and expose the U.S. taxpayer to takings litigation. This provision will also make the United States more dependent on foreign sources of mineral commodities and our country less competitive with other nations for mining investment dollars."*

Additionally, under H.R. 2262, a 4% royalty will be assessed for hardrock mines that are currently operating.

**Note: Natural Resources Committee Republicans have concerns that this legislation violates the Constitution on three fronts: (1) Taking property through legislative means is a direct violation of the Fifth Amendment, (claim owners have a property right which is perfected if they discover a mineral deposit); (2) The retroactive nature of the 4% royalty violates the due process clause of the Fifth Amendment; and (3) it also violates the Equal Protection Clause by forcing some miners to pay a higher royalty than their competition (different royalty rates on existing and new mines).*

<u>Abandoned Mine and Community Assistance Funds created</u>
H.R 2262 creates two new funds; the Abandoned Locatable Minerals Mine Reclamation Fund and the Locatable Minerals Community Impact Assistance Fund. The first will be financed by two thirds of the monies collected under the new royalty system as well as other fees levied against mining companies and the later will be financed using the remaining one-third of the royalty fund.

The Reclamation Fund will be used to assist in the clean-up of mines that have been abandoned because the original owner is deceased and there are no heirs or, in the case of a company, the company is no longer in business.

The Assistance Fund will be used to assist communities or Indian tribes that have been adversely affected by mining developments near their communities.

<u>Removal of certain lands for mining purposes</u>
H.R. 2262 reduces the amount of land available for hardrock mining in the United States by imposing new restrictions on which lands can be mined for hardrock minerals and those that cannot. Under this legislation, the following lands will be unable to be used for hardrock mining:

- Lands recommended for wilderness designation by the agency managing the surface;

- Lands being managed by the Secretary as wilderness study areas or National Monuments, unless the location of a mining claim is specifically allowed to continue by the statute designating the study area;

- Lands that are in designated Wild and Scenic Rivers and under study for inclusion in the National Wild and Scenic River System, determined by a Federal agency to be eligible for inclusion in such system, or designated Wild and Scenic Rivers that have been withdrawn from mineral entry by action of the Secretary of the Interior;

- Lands withdrawn or segregated from mineral entry under authority of other law;

- Lands designated as Areas of Critical Environmental Concern;

- Lands identified as "sacred sites" in accordance with Executive Order 13007; and

- Lands identified in the Roadless Area Conservation Rule of January 2001.

**Note: Natural Resources Committee Republicans estimate that this legislation will remove "roughly 90 million acres of land from being able to be explored for minerals or mined."*

<u>New environmental procedures</u>
This legislation increases several steps that exploration companies and prospectors must undertake before they are allowed to evaluate their mining claims. The bill expands the number of required steps that mining companies must undertake to develop a mineral deposit and build a mine. These new requirements include: site characterization data, an operations plan, a reclamation plan, monitoring plans, long-term maintenance plans, and documentation demonstrating they are not in violation of any provisions of the Act. There are 28 other requirements relating to the above information that must also be filed in order to be eligible for a permit.

The bill requires those applying for a permit to provide financial assurances that they will be able to perform their plan as requested, be able to reclaim the land once it has been used, and be able to pay for any environmental issues that may arise from using the land for mining. These assurances would be issued in the form of a bond, which would be held by the Secretary of the Interior until the area was restored to its previous working condition and the Secretary was satisfied with the results.

The above procedures would also be applied to proposed oil shale mines that were located under the mining law prior to the Mineral Leasing Act of 1920 when oil shale, oil and gas, coal and other leasable minerals were removed from operation of the mining law.

**Note: Natural Resources Committee Republicans found that this provision "creates a whole new environmental permitting system for hardrock mines even though a*

comprehensive framework of state and federal laws and regulations, and bonding requirements governing this type of mining is already in place."

Discontinuance of patents for mining purposes

H.R. 2262 discontinues the use of patents for claiming mine areas. A patent will only be issued if it was requested before September 30, 1994.

** Note: Natural Resources Committee Republicans have expressed concerns with this language because without patents, mining companies will be unable to establish a legal presence on the land and will be forced to find new ways to secure financing for their projects. Patents allow claimants to retain possession of the land, thus being able to show banks income availability and be able to secure a loan.*

Redefining "Undue Degradation" and veto power

"Undue degradation" is defined in this legislation as "irreparable harm to significant, cultural, or environmental resources on public lands that cannot be effectively mitigated."

Under current law, "undue degradation" is defined as "impacts greater than those that would normally be expected from an activity being accomplished in compliance with current standards and regulations and based on sound practices, including use of the best reasonably available technology."

**Note: During Committee hearings on this legislation Cong. Cathy McMorris-Rodgers (R-WA) offered an amendment to completely strike the section of the bill where the term "undue degradation" occurred and other provisions that allow for a mine veto. The definition of "undue degradation" as contained in H.R. 2262 provides the Secretary of the Interior or the Secretary of Agriculture the ability to veto lands that are already being developed. Natural Resources Committee Republicans stated in their dissenting views that, "Such a veto is unprecedented for projects on federal land…Uncertainty created by the mine veto provisions will deter investment in domestic mining projects. Investors need to know that a mining project in the United States can obtain approval and proceed unimpeded as long as the operator complies with all relevant laws and regulations."*

Length of permits and fees

H.R. 2262 establishes that hardrock mine permits may be issued for a period of up to 20 years and the hardrock mine must be active within two years after the permit is issued or the permit must be renewed and reviewed. The permit must be reviewed every 10 years by the appropriate Secretary (the Secretary of the Interior or the Secretary of Agriculture). This review is open to public comment; if the person or entity is found to be in any violation of any regulations contained in H.R. 2262, the permit may be revoked.

**Note: Natural Resources Committee Republicans find this new permitting process to be problematic because some mines will be functioning for up to a hundred years. If they are required to undergo review every ten years, the entire operation could, in theory, be threatened every ten years. Currently, mining companies have a life of a mine permit for the areas identified within their permit boundary. If additional ore is found outside their*

permit boundary and it is found to be economically beneficial to develop and mine, the company must go through another permitting process. The agencies currently review reclamation bonds every three years and adjust them upwards if necessary. The government gives other types of businesses, for example hydropower facilities or nuclear power plants, much longer permit times.

User fees

Under H.R. 2262 the Secretary(s) may also impose fees as needed for the permit approval process. According to the text of H.R. 2262, "The Secretary of the Interior and the Secretary of Agriculture are each authorized to establish and collect from persons subject to the requirements of this Act such user fees as may be necessary to reimburse the United States for the expenses incurred in administering such requirements."

New powers granted to Secretary and citizens

The legislation allows private citizens and organizations to bring legal suits against mining companies and the Secretary of the Interior or the Secretary of Agriculture in order to force compliance with the laws set forth in this legislation. It also allows persons and organizations to challenge the issuance of a permit for hardrock mining purposes.

Fines for violating provisions of this Act

H.R. 2262 outlines civil and criminal procedures to pursue the miner if he is found to be out of compliance with any part of the Act. If a person fails to comply with any environmental requirement, they will be subject to a fine of up to $25,000, and each day the violation is ongoing it can be treated as a separate offense subject to the same fine of up to $25,000.

H.R. 2262 further establishes that any person found to be making a false material statement can be subject to a fine of up to $10,000 or 2 years in prison. The fine and jail time can be doubled for repeat offenders.

BACKGROUND

Hardrock mining is regulated by the "General Mining Law of 1872," which was passed in an effort to bring order to the lands being prospected in the West during that time. Under this legislation, prospectors would pay a small fee to hold the land and see if it was worth mining. Once it was deemed to be minable, additional fees were paid to the government and a prospector was free to use the land as they wanted for mining purposes.

In Fiscal Year 2006, the Bureau of Land Management estimated that it took in $55 million in collected mining fees. There have also been several laws that have amended the "General Mining Law of 1872" including the Mineral Leasing Act of 1920, which removed many mineral commodities from claim location under the Mining Law. The Federal Land Policy and Management Act of 1976 required the Department of Interior and the Department of Agriculture to issue surface mining and reclamation regulations for locatable minerals (the subject of H.R. 2262). These are known as the 3809

regulations issued by the Bureau of Land Management and the 228 regulations issued by the Forest Service. Other environmental laws that the mining industry and prospectors have to be in compliance with include: the National Historic Preservation Act (1966), the Air Quality Act (1967), National Environmental Policy Act (1969), Clean Water Act/Federal Water Pollution Control Act (1972), Archaeological Resources Protection Act (1979), Hazardous and Solid Waste Amendments (1984), and Superfund Amendments and Reauthorization (1986).

The law from 1872 has been updated, through a series of rules that have been issued by the Department of Interior, to reflect environmental concerns, fees, and other issues that have arisen in the 135 years since the enactment of the original legislation.

AMENDMENTS
(The Amendment summaries below appear as they are printed on the Republican Rules Committee website)

Representative Nick Rahall (D-WV): The amendment would clarify that "valid existing rights" associated with existing mining claims would be protected under the Act. It would clarify that in addition to paying a 4% royalty, existing operations will still need to come into compliance with the Act within 10 years. It would clarify that the claim maintenance and location fees currently allotted to administration of the mining laws will continue to be so allotted with the balance going to clean-up of abandoned hardrock mines, subject to appropriations. It would clarify that user fees assessed by the BLM to process mining permit applications will be used for administration of the mining law program. It would limit the purview of section 504-citizen suits- to permits issued pursuant to title III of the Act. Finally, it would clarify that nothing under the Act will affect the sovereign immunity of any Indian Tribe.

Representative Stevan Pearce (R-NM): This amendment would establish the Mineral Commodity Information Administration into a role in the Department of Interior. This administration would have the Minerals Information Team (MIT) to collect, analyze, and disseminate information on the domestic and international supply of, and demand for, minerals and mineral materials critical to the U.S economy and national security. This amendment will remove the MIT from under the U.S. Geological Survey and establish it as a stand-alone agency within the Department of the Interior. The amendment increases MIT's staff in order to perform the new and expanded functions authorized in the amendment.

Representative Doris Matsui (D-CA): The amendment states that river watershed areas may be considered as eligible and as priorities to receive funding from the Abandoned Locatable Minerals Mine Reclamation Fund.

Representative Dean Heller (R-NV): The amendment would redirect 50 percent of the funds deposited into the Hardrock Reclamation Fund to states in proportion to the royalty funds generated there.

Representative Bill Sali (R-ID): Strikes section 101- Limitation on Patents.

Representative Chris Cannon (R-UT): This amendment would strike section 517- Mineral materials.

Representative Stevan Pearce (R-NM): This amendment would strike the definition of "undue degradation" in the legislation.

COST

The Congressional Budget Office (CBO) estimates that "implementing the bill would increase discretionary spending by $16 million in 2008 and $267 million over the 2008-2012 period, assuming appropriation of the necessary amounts. We also estimate that enacting H.R. 2262 would reduce direct spending by $10 million in 2008, $206 million over the 2008-2012 period, and $382 million over the 2008-2017 period. Finally, we estimate that the bill would have no impact on revenues in 2008, but would increase them by $160 million over the 2009-2012 period, and $310 million over the 2009-2017 period."

CBO further noted that "H.R. 2262 contains private-sector mandates, as defined in UMRA, that would affect certain holders or operators of mining claims on public land. The bill would impose a royalty on the production of hardrock minerals from those claims. The bill also would require persons paying royalties to comply with certain administrative procedures. CBO estimates that the cost of those mandates would fall below the annual threshold established in UMRA for private-sector mandates ($131 million in 2007, adjusted annually for inflation)."

ADDITIONAL VIEWS

Sixteen Republicans, including Ranking Member Don Young (R-AK), signed the dissenting views to H.R. 2262, which is included in the Committee Report on H.R. 2262 and states: "We strongly oppose H.R. 2262, the `Hardrock Mining and Reclamation Act of 2007' because we believe it will decimate the remnants of an already sadly diminished domestic mining industry. It will export American jobs, good American jobs, to other nations, and make us more dependent on others for the materials necessary for our high tech future. H.R. 2262 leaves a grave legacy that threatens our long term economic and national security.

We very strongly believe that H.R. 2262 will harm domestic mining investment and will cause mines to close prematurely. We do not believe it will generate the expected revenues. Rather, it will force taxpayers to bare the burden of the increased federal bureaucracies needed to implement and administer the Act without an industry to monitor.

We believe that this Act will increase the United States' dependency on foreign sources of mined materials impacting our economy, balance of trade and national security. It will

certainly adversely impact the rural mining communities in the West whose citizens working in the mines earn the best non-supervisory wages in the country. We believe that maintaining an industrial base in America--from raw materials to finished product is vitally important to our economic survival and our national security. This bill fails to secure our national supply of minerals and leaves us vulnerable and dependent on unstable nations with little or no regard for their own environmental concerns and certainly no regard for the importance of protecting America's economy."

MOTION TO RECOMMIT
Please find the Republican Motion to Recommit here.

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